

# Late Backup

#80  
Zoning Case No. C14-2007-0129

## RESTRICTIVE COVENANT

OWNER: The Salvation Army, a Georgia corporation

ADDRESS \_\_\_\_\_ Atlanta, GA \_\_\_\_\_

CONSIDERATION Ten and No/100 Dollars (\$10 00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY. Tract One Lot 1, Cumberland Center Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Plat Book 70, Page 48, of the Plat Records of Travis County, Texas, and

Tract Two A 4 812 acre tract of land, more or less, being the south part of a 10 02 acre tract of land in the Issac Decker League, Survey 20, Abstract 8, said 10 02 acre tract of land being more particularly described by metes and bounds in a deed of record in Volume 4338, Page 810, Deed Records of Travis County, Texas

WHEREAS, the Owner of the Property and the Galindo Elementary Neighborhood Association ("GENA") have agreed the Owner shall perform certain obligations associated with the rezoning and development of the Property, and

WHEREAS, the Owner, GENA, and the City of Austin have agreed that the City should reserve the right to roll back the Owner's requested zoning if those obligations are not timely performed, and

WHEREAS, the Owner has agreed that the Property should be impressed with certain covenants and restrictions to give effect to these agreements,

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns

- I Owner has agreed with GENA that Owner shall
  - a provide two acres of land for use as a community park of which one/half acre shall be a community garden,
  - b. provide rooftop rainwater harvesting for the community garden use;
  - c. provide pedestrian trails or sidewalks within the Property that link sidewalks along Cumberland Road and South 5<sup>th</sup> Street Pedestrian access shall be provided to Garden Villa Lane,
  - d provide for public access throughout the open space area of the Property; and

e post fiscal surety in the amount of \$50,000.00 for the installation of any traffic calming devices that the Director of the City's Public Works Department determines is appropriate along Cumberland Road, other street adjacent to the Property, or other street with the Galindo Neighborhood boundaries, prior to the time of site plan approval. The Owner's agreement with GENA to post surety for traffic calming shall not impair the City's ability under the City Code, and the City reserves the right, to require other traffic improvements to the degree necessary to mitigate other traffic impacts from development of the Property.

- 2 If Owner has not satisfied its obligations to GENA under Paragraph 1 within sixty (60) months of the date this covenant, then the Owner will not object to the rezoning of the Property by the City to multifamily residence limited density (MF-1) zoning district.
- 3 If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
- 4 If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
- 5 If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
- 6 This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**OWNER:**

**THE SALVATION ARMY,  
A Georgia corporation**

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

APPROVED AS TO FORM:

\_\_\_\_\_

Assistant City Attorney  
City of Austin

THE STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_,  
2008, by \_\_\_\_\_, \_\_\_\_\_, of The  
Salvation Army, a Georgia corporation, on its behalf

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

After Recording, Please Return to:  
City of Austin  
Department of Law  
P. O. Box 1088  
Austin, Texas 78767-1088  
Attention: Diana Minter, Paralegal